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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **MELANIE NOEL SMITH**
14 **5055 Collwood Blvd., #308**
San Diego, CA 92115

15 **Pharmacy Technician Registration No. TCH**
16 **165538**

17 Respondent.

Case No. 7266

18 **DEFAULT DECISION AND ORDER**

19 [Gov. Code, §11520]

20 **FINDINGS OF FACT**

21 1. On or about June 16, 2022, Complainant Anne Sodergren, in her official capacity as
22 the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed
23 Accusation No. 7266 against Melanie Noel Smith (Respondent) before the Board. (Accusation
24 attached as Exhibit A.)

25 2. On or about May 15, 2018, the Board issued Pharmacy Technician Registration No.
26 TCH 165538 to Respondent. The Pharmacy Technician Registration was in full force and effect
27 at all times relevant to the charges brought in Accusation No. 7266 and will expire on October 31,
28 2023, unless renewed.

1 3. On or about June 28, 2022, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 7266, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is: 5055 Collwood Blvd., #308, San Diego, CA 92115.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business and Professions Code section
9 124.

10 5. Government Code section 11506, subdivision (c) states, in pertinent part:

11 The respondent shall be entitled to a hearing on the merits if the respondent
12 files a notice of defense . . . and the notice shall be deemed a specific denial of all
13 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
14 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
15 discretion may nevertheless grant a hearing.

16 6. The Board takes official notice of its records and the fact that Respondent failed to
17 file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore
18 waived her right to a hearing on the merits of Accusation No. 7266.

19 7. California Government Code section 11520, subdivision (a) states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense . . . or to appear at
21 the hearing, the agency may take action based upon the respondent's express
22 admissions or upon other evidence and affidavits may be used as evidence without
23 any notice to respondent

24 8. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
27 finds that the charges and allegations in Accusation No. 7266, are separately and severally, found
28 to be true and correct by clear and convincing evidence.

 9. The Board finds that the actual costs for Investigation is \$3,886.25, as of August 10,
2022.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Melanie Noel Smith has subjected her Pharmacy Technician Registration No. TCH 165538 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board is authorized to revoke Respondent's Pharmacy Technician Registration based on the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. Respondent has subjected her pharmacy technician registration to disciplinary action under Code sections 490 and 4301, subdivision (l), because she was convicted of a crime, DUI with a prior conviction within ten years, that is substantially related to the qualifications, functions, and duties of a registered pharmacy technician.

b. Respondent has subjected her pharmacy technician registration to disciplinary action under Code section 4301, subdivision (k), for unprofessional conduct, because on August 30, 2021, and September 11, 2012, she was convicted of two misdemeanors involving the consumption of alcoholic beverages.

c. Respondent has subjected her pharmacy technician registration to disciplinary action under Code section 4301, subdivision (h), for unprofessional conduct, because on January 1, 2021, Respondent used alcoholic beverages to an extent or in a manner that was dangerous and injurious to herself and the public when she operated a motor vehicle while impaired by alcohol.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 165538, issued to Respondent Melanie Noel Smith, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on October 5, 2022.

It is so ORDERED on September 6, 2022.



Seung W. Oh, Pharm.D.
Board President
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

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DOJ Matter ID:SD2022800621

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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2 GREGORY J. SALUTE
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Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 7266

14 **MELANIE NOEL SMITH**
15 **5055 Collwood Blvd., #308**
San Diego, CA 92115

ACCUSATION

16 **Pharmacy Technician Registration No.**
17 **TCH 165538**

Respondent.

19
20 **PARTIES**

21 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

23 2. On or about May 15, 2018, the Board issued Pharmacy Technician Registration
24 Number TCH 165538 to Melanie Noel Smith (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on October 31, 2023, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Code section 4300, subdivision (a), states, "Every license issued may be suspended or
6 revoked."

7 5. Code section 4300.1 states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license
9 by operation of law or by order or decision of the board or a court of law, the placement
10 of a license on a retired status, or the voluntary surrender of a license by a licensee shall
11 not deprive the board of jurisdiction to commence or proceed with any investigation
12 of, or action or disciplinary proceeding against, the licensee or to render a decision
13 suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Code section 482 states:

14 (a) Each board under this code shall develop criteria to evaluate the rehabilitation
15 of a person when doing either of the following:

16 (1) Considering the denial of a license by the board under Section 480.

17 (2) Considering suspension or revocation of a license under Section 490.

18 (b) Each board shall consider whether an applicant or licensee has made a
19 showing of rehabilitation if either of the following are met:

20 (1) The applicant or licensee has completed the criminal sentence at issue
21 without a violation of parole or probation.

22 (2) The board, applying its criteria for rehabilitation, finds that the applicant
23 is rehabilitated.

24 ...

25 (d) This section shall become operative on July 1, 2020.

26 7. Code section 490 provides, in pertinent part, that a board may suspend or revoke a
27 license on the ground that the licensee has been convicted of a crime substantially related to the
28 qualifications, functions, or duties of the business or profession for which the license was issued.

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1 8. Code section 493 states:

2 (a) Notwithstanding any other law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or
4 revoke a license or otherwise take disciplinary action against a person who holds a
5 license, upon the ground that the applicant or the licensee has been convicted of a crime
substantially related to the qualifications, functions, and duties of the licensee in
question, the record of conviction of the crime shall be conclusive evidence of the fact
that the conviction occurred, but only of that fact.

6 (b) (1) Criteria for determining whether a crime is substantially related to the
7 qualifications, functions, or duties of the business or profession the board regulates
shall include all of the following:

8 (A) The nature and gravity of the offense.

9 (B) The number of years elapsed since the date of the offense.

10 (C) The nature and duties of the profession.

11 (2) A board shall not categorically bar an applicant based solely on the type
12 of conviction without considering evidence of rehabilitation.

13 (c) As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

14 ...

15 (e) This section shall become operative on July 1, 2020.

16 9. Code section 4301 states:

17 The board shall take action against any holder of a license who is guilty of
18 unprofessional conduct or whose license has been issued by mistake. Unprofessional
conduct shall include, but is not limited to, any of the following:

19 ...

20 (h) The administering to oneself, of any controlled substance, or the use of any
21 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
or injurious to oneself, to a person holding a license under this chapter, or to any other
22 person or to the public, or to the extent that the use impairs the ability of the person to
conduct with safety to the public the practice authorized by the license.

23 ...

24 (k) The conviction of more than one misdemeanor or any felony involving the
use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
25 or any combination of those substances.

26 (l) The conviction of a crime substantially related to the qualifications, functions,
27 and duties of a licensee under this chapter. The record of conviction of a violation of
Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
28 regulating controlled substances or of a violation of the statutes of this state regulating
controlled substances or dangerous drugs shall be conclusive evidence of

unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (c), states:

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee has been convicted of a crime, the board will consider whether the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the criteria in subdivisions (b)(1)(A) through (E). If the licensee has not completed the criminal sentence at issue without a violation of parole or probation or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivisions (b)(1)(A) through (E), the board will apply the following criteria in evaluating the licensee's rehabilitation:

(1) Nature and gravity of the act(s) or offenses.

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offenses.

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) The criteria in subdivisions (b)(1)(A) through (E), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the licensee, including as provided in the board's Disciplinary Guidelines, identified in section 1760.

11. California Code of Regulations, title 16, section 1770, states:

(a) For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of the practice, profession, or occupation that may be performed under the license type sought or held if to a substantial degree it evidences present or potential unfitness of

1 an applicant or licensee to perform the functions authorized by the license in a
2 manner consistent with the public health, safety, or welfare.

3 (b) In making the substantial relationship determination required under
4 subdivision (a) for a crime, the board will consider the following criteria:

5 (1) The nature and gravity of the offense;

6 (2) The number of years elapsed since the date of the offense; and

7 (3) The nature and duties of the practice, profession, or occupation that
8 may be performed under the license type sought or held.

9 (c) For purposes of subdivision (a), substantially related crimes, professional
10 misconduct, or acts shall include, but are not limited to, those which:

11 ...

12 (5) Involve a conviction for driving under the influence of drugs or
13 alcohol.

14 **COST RECOVERY**

15 12. Code section 125.3 provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
19 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
20 included in a stipulated settlement.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(August 30, 2021 Criminal Conviction for DUI w/Prior on January 1, 2021)**

23 13. Respondent has subjected her pharmacy technician registration to disciplinary action
24 under Code sections 490 and 4301, subdivision (I), because she was convicted of a crime that is
25 substantially related to the qualifications, functions, and duties of a registered pharmacy
26 technician. On August 30, 2021, in a criminal proceeding entitled *The People of the State of*
27 *California v. Melanie Smith*, in San Diego County Superior Court, Case Number S317278,
28 Respondent pled guilty and was convicted of driving under the influence (DUI) of alcohol while
having a blood alcohol concentration (BAC) of 0.08 percent and more (Veh. Code, § 23152,
subd. (b)), a misdemeanor. Respondent admitted that she had a BAC of 0.15 percent or more,

1 within the meaning of Vehicle Code section 23578, and that she had a prior conviction for
2 alcohol-related reckless driving “wet reckless” (Veh. Code, § 23103(a)) within ten years of this
3 DUI. The misdemeanor complaint reflects that Respondent was convicted of alcohol-related
4 reckless driving “wet reckless” (Veh. Code, § 23103(a)) on September 11, 2012, in case number
5 C323324. Respondent admitted this enhancement/allegation in her written guilty plea. The court
6 suspended the imposition of Respondent’s sentence and granted her summary probation for five
7 years, with standard alcohol conditions. Respondent was ordered to serve 45 days on house arrest
8 through the County Parole and Alternative Custody program, complete a Multiple Conviction
9 DUI program and the Mothers Against Drunk Driving (MADD) program, and pay court fines and
10 fees. Respondent was also ordered to install an ignition interlock device in any vehicle she
11 operates for one year.

12 14. The circumstances that led to the August 30, 2021, conviction are that on January 1,
13 2021, at about 1:09 a.m., officers with the Chula Vista Police Department responded to a reported
14 single vehicle traffic collision into a light post in Chula Vista, California. Upon their arrival,
15 officers spoke with a witness and then made contact with Respondent, who was observed
16 screaming from the backset of her vehicle. An officer immediately noticed that Respondent had
17 red, watery, bloodshot eyes, and the strong odor of an alcoholic beverage on her breath. Officers
18 conducted a DUI investigation and noticed that Respondent displayed lack of smooth pursuit in
19 both eyes during the Horizontal Gaze Nystagmus test. Respondent admitted to consuming “a
20 couple of shots of tequila” prior to driving and stated that she did not recall how the crash
21 occurred. Respondent refused a preliminary alcohol-screening test. Respondent was transported
22 to a local hospital due to reported injuries sustained from the collision. Respondent was arrested
23 for DUI and submitted a blood sample, which was sent for analysis. Respondent’s BAC was
24 0.189 percent.

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3. Taking such other and further action as deemed necessary and proper.

DATED: 6/16/22

Signature on file

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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